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courts to allow recovery more readily. Hence the principal case seems sound in result. It may be doubted, however, whether the English courts would not on the same facts deny recovery, on the ground that a volunteer, even though not an officious intermeddler, cannot recover. See *Macclesfield Corporation v. Great Central Ry.*, *supra*.

STATUTORY CONSTRUCTION—VACCINATION—EXCLUSION FROM SCHOOL.—The compiled laws of North Dakota provide that: it shall be the duty of principals, teachers, parents, etc., to refuse to permit any child having any contagious or infectious disease, including smallpox, to attend a public or private school; each parent or guardian *shall* cause any minor in his care to be vaccinated; any person not complying with this provision *shall* be guilty of a misdemeanor and punishable by a fine; it shall be the duty of the state board of health to make and enforce all *needful* rules and regulations for the *prevention* and cure, and to prevent the spread of any contagious, infectious or malarial diseases among persons and domestic animals; that all school boards shall coöperate with the state board of health. The state board of health promulgated an order requiring every child to present satisfactory evidence of vaccination before being admitted to school. The defendant, a local school board, adopted the order of the state board of health and excluded the plaintiff, a minor, from school for non-compliance therewith. There was no epidemic of smallpox in the neighborhood and no apprehension of such. A further statute made the attendance of children of the age of the plaintiff compulsory, and penalized the parents for failure to comply with same. The plaintiff applied for a writ of *mandamus* to compel the board to admit him to school. *Held*, (Cole, J., *dissenting*) that the writ should be granted. *Rhea v. Board of Education*, etc. (1919, N. D.) 171 N. W. 103.

The court reasoned that the failure to include non-vaccination in the statute which made it the duty of teachers, etc., to refuse admission to those children having any contagious or infectious disease, etc., indicated that the claimed power was not intended to be granted either to the state board of health or the local board of education, on the ground that *expressio unius est exclusio alterius*; that a board of health which possesses merely *general* powers for the *prevention* and spread of contagious diseases, cannot, in the absence of reasonable apprehension of danger, promulgate and enforce rules which seriously cut into the individual's liberty and whose preventive efficacy is doubtful to the court. The power of the legislature by *express* provision to authorize administrative boards to *require* vaccination and penalize non-compliance has been acknowledged in nearly every state. *Herbert v. School Board* (1916) 197 Ala. 617, 73 So. 321; *Blue v. Beach* (1900) 155 Ind. 121, 56 N. E. 89; *State v. Hay* (1900) 126 N. C. 999, 35 S. E. 459; *Morris v. City of Columbus* (1897) 102 Ga. 792, 30 S. E. 850. Nor is it necessary for such boards, possessing an express power, to wait until a threatened epidemic before prohibiting school attendance of children not complying with their order. *State ex rel. Milhoof v. Board of Education* (1907) 76 Oh. St. 297, 81 N. E. 568; *Re Rebenack* (1895) 62 Mo. App. 8; *cf. Bissel v. Davison* (1894) 65 Conn. 183, 32 Atl. 348. It has been denied, however, that a board possessing express power only to enforce regulations "necessary to safeguard the public health," and to "prevent the spread of disease," has the power to exclude children when there is no epidemic apprehended. *Jenkins v. Board of Health* (1908) 234 Ill. 422, 84 N. E. 1046, 17 L. R. A. (N. S.) 709; *Potts v. Breen* (1897) 167 Ill. 67, 47 N. E. 81; *Adams v. Burdge* (1897) 95 Wis. 390, 70 N. W. 347; *cf. State ex rel. Cox v. Board of Education* (1900) 21 Utah, 401, 60 Pac. 1013. Whether such *general* power of the board includes the specific power to require vaccination, etc., in the absence of an epidemic, is obviously in any given case a question of legislative intent. In

the instant case the statutes requiring all children to be vaccinated, and to attend school, are in *pari materia* with the imposition of duty on teachers, etc., to refuse admission to schools of children suffering from disease or living in homes, etc., and with the statute giving the board of health general power to make all regulations needful for the public health. The intent of the legislature would seem to be strongly evidenced by the statute which required *all* children to be vaccinated and penalized the parents for the non-compliance. This interpretation does not seem to be materially weakened by the application to the statute making it the duty of teachers to exclude in certain cases of the maxim *expressio unius*, etc. It has been objected to such an interpretation, however, that when a parent was subject to a statute which required the vaccination of children and penalized him for non-compliance, and when he was also subject to a penalty for neglect to send his child to school, the result would by *implication* give the board a power to which an *express* grant of the legislature is necessary; namely, to enforce vaccination. *Cf. Matthews v. Board of Education* (1901) 127 Mich. 530, 86 N. W. 1036. The majority of the court in the principal case seem to have been influenced by this reasoning. "It is not particularly the function of the board of health to compel compliance with this statute. The board is not the public prosecutor." But the objection seems hardly sound, for it has been held under facts similar to those of this case that a parent acquires a privilege of not complying with the compulsory education act. *State ex rel. O'Bannon v. Cole* (1909) 220 Mo. 697, 119 S. W. 424; *Commonwealth v. Smith* (1900) 9 Pa. Dist. 625. It should be observed that the Supreme Court of North Dakota seems to judge for itself both whether the conditions demanded preventative measures and whether a requirement of vaccination was such a measure, which is contrary to the general rule of leaving the board a wide discretion in such matters and of taking judicial notice of the teachings and belief of the majority of medical experts on the value of vaccination. For similar distinction between general and express powers of boards, as to compulsory physical examination, see (1919) 28 YALE LAW JOURNAL, 703.